United Nations A/C.3/65/2

General Assembly

Distr.: General
21 October 2010

Original: English

Sixty-fifth session
Third Committee
Agenda item 68 (c)
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 20 October 2010 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum on the situation of human rights in the Union of Myanmar (see annex).

I should be grateful if the present letter and its annex could be circulated as a document of the General Assembly under agenda item 68 (c).

(*Signed*) Than **Swe**
Permanent Representative

10-59714 (E) 271010

Please recycle

Annex to the letter dated 20 October 2010 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in the Union of Myanmar

Contents

		Page
I.	Introduction	3
II.	Brief political background of Myanmar	3
III.	Cooperation with the United Nations	4
IV.	Combating illegal narcotic drugs	5
V.	Promotion and protection of human rights	5
VI.	Allegations regarding internally displaced persons	5
VII.	Child soldiers	6
VIII.	Trafficking in persons	7
IX.	Violence against women	7
X.	Allegations of forced labour	8
XI.	Religious tolerance	8
XII.	Economic and social development	8
XIII.	Recent developments in Myanmar	9
XIV.	Conclusion	11

I. Introduction

1. The General Assembly on 24 December 2009 adopted resolution 64/238, "Situation of human rights in Myanmar". The resolution is merely a country-specific human rights resolution and contains mostly allegations that emanated from anti-government groups both inside and outside the country. Most allegations are pure fabrication that no one can verify with authority. Being based on a report prepared from selective and dubious sources, it was most biased and derogatory. As a result, the resolution, based on such a report with the intention of exerting political pressure on the country and dictating its future, became unrealistic, highly selective and subjective.

2. Since the present Government assumed State power on 18 September 1988, many significant achievements have taken place in both political and socio-economic fronts. The Government of Myanmar is fully committed to the establishment of a multi-party democracy with its seven-step road map. In addition, since 1989 the Government has granted amnesties 15 times to a total of 115,000 prisoners who have shown good conduct while serving their terms, with a view to enabling them to actively participate in nation-building endeavours as law-abiding citizens.

3. The European Union resolution entitled "Situation of human rights in Myanmar" simply portrayed Myanmar as a country in armed conflict with gross violations of human rights, totally neglecting the positive measures taken and achieved by the Government. In reality, in today's information age, no country can hide the real situation of a country. In fact, Myanmar is enjoying unprecedented peace in all parts of the country, with very few skirmishes in pockets of border areas where few armed groups, reluctant to come into the legal fold, remain. The resolution tabled by the European Union only intends to exert pressure and dictate the future of Myanmar.

4. Pursuant to resolution 64/238, the current session will continue its consideration on the situation of human rights in Myanmar. This memorandum is being circulated to provide information on the situation in Myanmar focusing on areas addressed in the resolution and where numerous positive changes have taken place.

II. Brief political background of Myanmar

5. Myanmar is a multi-ethnic, multi-religious country and is home to eight major ethnic groups comprising over 100 ethnic nationalities. It is situated in a strategic part of the Asian continent and is surrounded by countries with different political systems, cultures and religions. Its five neighbours include the world's two most populous countries, China and India. The challenges faced by Myanmar are therefore complex. The Government of Myanmar has to ensure harmony and maintain close and harmonious relations with her neighbours based on the five principles of peaceful coexistence. These unique circumstances of Myanmar should be taken into account whenever its situation is considered.

6. Myanmar opted for parliamentary democracy at independence in 1948. However, as the system did not live up to expectations, it switched to socialism in 1974. Subsequently, in 1988, the socialist system was terminated and a multi-party system and a market-oriented economy were introduced. As national unity is vital

for the country, the Government has been striving to promote it. Peace overtures have resulted in the return to the legal fold of 17 out of 18 major armed insurgent groups. The door is still left open for the remaining armed groups.

7. Now that peace and stability prevail in the country, the Government is focusing on the political, economic and social development of the country. A seven-step road map for transition to democracy was initiated in 2003. As the fifth step of the seven-step road map, the Government has taken initiatives to hold free and fair elections. Electoral laws were promulgated and the election commission was formed. Political parties are being registered and preparing earnestly to participate in the forthcoming elections, scheduled for 7 November 2010.

III. Cooperation with the United Nations

8. Cooperation with the United Nations is a cornerstone of Myanmar's foreign policy. Myanmar, in accordance with its independent and active foreign policy, has participated in all major activities of the United Nations and its specialized agencies in various fields, including human rights. Myanmar provides the necessary information to United Nations bodies and submits reports to relevant United Nations treaty bodies.

9. Myanmar's engagement with the United Nations is reflected in the high-level visits to Myanmar of senior United Nations officials. The Secretary-General, Ban Ki-moon, visited Myanmar twice. His first visit took place soon after Cyclone Nargis hit Myanmar in 2008. He took part in the pledging conference and visited the areas affected by the storm. He visited Myanmar again a year later and witnessed first-hand the success of the cooperation by the Government of Myanmar, the United Nations and the Association of Southeast Asian Nations (ASEAN) in carrying out relief, rehabilitation and reconstruction work. During his visit, he met twice with Senior General Than Shwe, the Chairman of the State Peace and Development Council (SPDC). He also met with the representatives of all 10 registered political parties and the 7 ceasefire groups.

10. The Special Adviser of the Secretary-General on Myanmar and special envoys of the Secretary-General have visited Myanmar numerous times. The Special Rapporteur on the situation of human rights in Myanmar, Mr. Tomas Ojea Quintana, and his predecessors, have been invited to Myanmar. During their visits, they were allowed to visit the places they requested and it was also arranged for them to meet with the persons they wished, as much as possible. Mr. John Holmes, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator and Ms. Margareta Wahlström, Assistant Secretary-General for Disaster Risk Reduction, have also visited Myanmar. Ms. Radhika Coomaraswamy, the Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Josette Sheeran, the Executive Director of the World Food Programme, Mr. Kari Tapiola, the Executive Director of the International Labour Organization (ILO), Mr. Antonio Guterres, the United Nations High Commissioner for Refugees and Dr. Noeleen Heyzer, Executive Secretary of the Economic and Social Commission for Asia and the Pacific are among the senior officials of the United Nations who have been to Myanmar between 2007 and 2010, at the invitation of the Government of Myanmar.

IV. Combating illegal narcotic drugs

11. Myanmar has been relentlessly waging a determined war against the menace of narcotic drugs, as a matter of national responsibility, for decades. To combat this menace we have laid down a comprehensive 15-year National Plan since 1999. National efforts against drugs are based on two strategies: to strive for the eradication of narcotic drugs as a national task, and to strive for the elimination of poppy cultivation through the promotion of the living standards of the national races residing in the border areas. These strategies are buttressed by strengthened legislation and effective law enforcement.

12. Owing to the efforts made by the Government of Myanmar, poppy cultivation and opium production decreased from 81,400 hectares of cultivation and 813 tons of opium production in 2002 to 31,700 hectares of cultivation and 330 tons of opium production in 2009. Moreover, Myanmar has been able to declare opium-free zones in the Mongla, Kokang and Wa regions. These regions were the largest poppy-growing areas in the country. Myanmar aims to rid the country of narcotic drugs by 2014, one year ahead of the target year set by ASEAN.

V. Promotion and protection of human rights

13. Promotion and protection of human rights must be addressed in the global context through a constructive, dialogue-based and non-confrontational approach. Cooperation rather than politicization of human rights can bring about improvements in human rights situations in the world. Myanmar strongly supports the position of the Non-Aligned Movement, which opposes and condemns selectivity and double standards in the promotion and protection of human rights and the exploitation of human rights for political purposes. Myanmar accords priority to the right to development and has been striving for the all-round development of the country. With a view to promoting and protecting human rights, the Myanmar Human Rights Committee was formed on 26 April 2000, headed by the Minister for Home Affairs. On 14 November 2007, it was transformed into the Myanmar Human Rights Body, also led by the Minister for Home Affairs. Its tasks are to review and submit reports to the United Nations and international human rights activities, to study and make recommendations on the establishment of a National Human Rights Commission and to establish necessary working groups. Moreover, the Minister for Home Affairs, in his capacity as the Chairman of the Body, accepts complaints of human rights violations, carries out investigations and takes proper actions although they are not included in the mandate of the Body.

14. The allegations of human rights violations invariably emanate from anti-government elements. It is unfortunate that they have found their way into United Nations reports. Information should be thoroughly checked and verified before inclusion in official documents.

VI. Allegations regarding internally displaced persons

15. Peace and stability have been restored in the country, with the return of 17 armed groups, totalling over 100,000 people, to the legal fold. They are joining hands with the Government for the development of their respective regions.

Therefore, Myanmar is not in a situation of armed conflict, and peace and stability have prevailed throughout the country.

16. The issue of cross-border movement of peoples between Myanmar and Bangladesh is being addressed amicably between the two countries. Since 1993, the Government has been cooperating with the Office of the United Nations High Commissioner for Refugees in facilitating the voluntary repatriation process. With regard to the boat people in the Bay of Bengal, Myanmar has declared its willingness to cooperate with the countries in the region to find a solution. It is prepared to receive all those who provide proof that they are indeed from Myanmar. The so-called internally displaced persons are mostly illegal economic migrants and a few remaining insurgents and their families.

VII. Child soldiers

17. The Myanmar Armed Forces is an all-volunteer army. Those who enlist in the military do so of their own volition. Under Myanmar Defence Services and War Office Council instructions, an individual is not permitted to enlist in the armed forces until he has attained the age of 18. Forced conscription in any form is strictly prohibited. The Committee for the Prevention of Military Recruitment of Underage Children was established on 5 January 2004 and has been tasked to prevent recruitment of underage children, to protect the interests of underage children and to ensure faithful adherence to the orders and instructions for the protection of underage children. The Committee has also set up a task force composed of the relevant line ministries such as the Ministry of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Labour and the Ministry of Social Welfare, Relief and Resettlement.

18. In order to raise awareness among those who are involved in the recruitment process, the Government of Myanmar, the United Nations Children's Fund and non-governmental organizations are conducting workshops on the protection and promotion of children's rights and the directives and regulations governing the recruitment process. New recruits found to be underage are discharged and returned to their parents or guardians. A total of 374 underage children have been returned to their guardians since 2002. With a view to having better scrutiny during the recruitment process, the Government has introduced a fingerprint identifying control system database at four major recruitment centres. Punitive action has been taken against recruiters who contravene military recruitment regulations. Disciplinary action has been taken against 109 military personnel who failed to abide by the rules and regulations of military recruitment. The Government has been regularly providing detailed information regarding the progress of its awareness-raising activities, the number and specific particulars of the underage children discharged from the military and other data pertinent to the United Nations country team and to the Office of the Special Representative of the Secretary-General for Children and Armed Conflict. The addresses of the discharged recruits have been included in the list for ease of verification and follow-up activities by the country team.

19. Since the visit of the Special Representative of the Secretary-General for Children and Armed Conflict to Myanmar, a series of follow-up measures have been taken to address the question of child soldiers. At her request and pursuant to Security Council resolution 1612 (2005), a national focal point was established and

two working groups were formed in 2007. They are the Working Group on Monitoring and Reporting and the Working Group on Reintegration and Rehabilitation. The Working Group on Monitoring and Reporting is cooperating with the United Nations country team in drafting the plan of action. On 28 September 2010, the eleventh coordinating meeting of the Committee for the Prevention of Military Recruitment of Underage Children, which is headed by an Adjutant-General, was held in Nay Pyi Taw. As a follow-up to the coordinating meeting, the first technical-level meeting between the Working Group on Monitoring and Reporting and the United Nations country team was held in Nay Pyi Taw, on 4 October 2010, for the purpose of drafting a plan of action.

20. Six of the armed groups that have returned to the legal fold, namely, the Democratic Karen Buddhist Army (DKBA), the Kachin Independence Organization (KIO/KIA), the Karenni National People's Liberation Front (KNPLF), the Myanmar National Democratic Alliance Party, the Karen National Union-Karen National Liberation Army (KNU-KNLA) Peace Council and the United Wa State Army (UWSA) have openly committed themselves not to recruit child soldiers.

VIII. Trafficking in persons

21. Myanmar has achieved considerable progress in its fight against human trafficking at both the national and regional levels. The Penal Code, which provides for heavy penalties against perpetrators, has been buttressed by the Anti-Human Trafficking Law, enacted in September 2005. Under the law, the Central Body for the Prevention and Suppression of Human Trafficking, headed by the Minister for Home Affairs, and three working groups assigned specific functions have been established to address human trafficking.

22. Myanmar is also participating in the regional anti-human trafficking process known as the Bali Process. To strengthen the multisectoral response to the human trafficking question in the Greater Mekong Subregion, an agreement was signed in Yangon in October 2004 at the Coordinated Mekong Ministerial Initiative against Trafficking.

23. Myanmar is a party to the United Nations Convention against Transnational Organized Crime and two Protocols — the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. A bilateral memorandum of understanding on the prevention of human trafficking has been signed with Thailand.

IX. Violence against women

24. Myanmar's tradition and culture provide protection for women and girls from abuse, including sexual and gender-based violence. Non-governmental organizations, such as the Myanmar Women's Affairs Federation, work actively to ensure that violence is not perpetrated against women. The allegations of sexual violence and gang rape invariably emanate from insurgent groups with a view to tarnishing the image of Myanmar's military. Rape is subject to severe punishment under the Penal

Code and is regarded as an abhorrent crime by the people of Myanmar. Gang rape is, therefore, an outrage and unimaginable in Myanmar.

25. Traditionally, women and men in Myanmar have equal rights. According to statistics for 2009-2010, in the education sector, 75.2 per cent of rectors, professors, associate professors, lecturers and assistant lecturers, and 77.45 per cent of township education officers, are women. Moreover, women are successfully taking leading roles in the private sector in Myanmar, which clearly demonstrates equal rights for women and men in Myanmar. As a national effort for the advancement of women, Myanmar is drawing up the National Plan of Action on the Advancement of Women, in line with the Beijing Platform for Action.

X. Allegations of forced labour

26. Myanmar and ILO have enjoyed cooperative relations since Myanmar joined the organization in 1948. After four decades, Myanmar's traditional practice of contributing labour for community development activities was questioned by ILO. The issue was brought before ILO by anti-government action under the mantle of free trade unions. Notwithstanding the measures taken by ILO, Myanmar continues to demonstrate its firm commitment to the eradication of forced labour in the country. It also continues to work with ILO.

27. In February 2007, the Government of Myanmar and ILO signed a supplementary understanding on the establishment of a mechanism to address forced labour, which has been implemented to the mutual satisfaction of the Government and ILO. The mechanism to deal with forced labour complaints is now fully operational. The supplementary understanding was extended in 2008 and 2009. On 19 January 2010, an agreement for extending the supplementary understanding for another year was signed between Myanmar and ILO.

XI. Religious tolerance

28. Myanmar is well-known for its unique culture, the hallmark of which is tolerance and compassion. Religious intolerance or discrimination on the ground of religion are non-existent in Myanmar, throughout its long history. The great majority of the population is Buddhist. Nonetheless, other religions, such as Christianity, Islam and Hinduism, coexist and flourish in Myanmar. Religious tolerance and freedom of worship are guaranteed by law and in practice throughout the length and breadth of the country. In major cities, pagodas, churches, mosques and Hindu temples can be seen side by side, testifying to the religious harmony and tolerance in Myanmar. Allegations of religious intolerance in Myanmar are groundless and are politically motivated. In respect to religious tolerance in Myanmar, knowledgeable observers consider it a model.

XII. Economic and social development

29. The Government has devoted significant resources to develop the health, education and transportation sectors. With a view to narrowing the gap between rural and urban areas, the Government has been implementing the three National

Development Programmes, namely (a) the Border Areas Development Programme; (b) the Plan for 24 Special Development Zones; and (c) the Integrated Rural Development Plan.

30. Sanctions against Myanmar are unwarranted. They are not only unjust but immoral. They deprive the people of their right to development.

XIII. Recent developments in Myanmar

A. Adoption of the new State Constitution

31. The new State Constitution was passed by 92.48 per cent of the total eligible voters in the referendum held in May 2008.

32. The Constitution provides for a bicameral legislature and a presidential system of governance. The President will be elected by a presidential electoral college. The State will be composed of seven states, seven regions, five self-administered zones and one self-administered division. Nay Pyi Taw, the capital, would be designated a Union territory. In keeping with the State structure, the Constitution also establishes 14 state and regional legislative bodies.

33. The Constitution has been drafted in accordance with the principles of constitutional law. In drafting the instruments, the drafters studied the constitutions of other countries. They also allowed the Basic Principles and Detailed Basic Principles laid down by the National Convention, reflecting views presented by people from different strata of life in Myanmar.

34. The Constitution contains various legal aspects of constitutional law found in the constitutions of other countries, including: Basic Principles of the Union; State Structure; Legislature; Executive; Judiciary; Defence Services; Citizens, Fundamental Rights and Duties of the Citizens; Elections; Political Parties; Provisions on State Emergency; Amendment of the Constitution; State Flag, State Seal, National Anthem and the Capital; Transitory Provisions; and General Provisions.

35. With regard to the Legislature, the Pyidaungsu Hluttaw[1] would be the principal organ. It would consist of the Pyithu Hluttaw[2] and the Amyotha Hluttaw.[3] The Pyithu Hluttaw will consist of 440 representatives and the Amyotha Hluttaw of 224 representatives. The representatives of the Pyithu Hluttaw and Amyotha Hluttaw will take turns for the Speakership of the Pyidaungsu Hluttaw for periods of two and a half years. The functions of the Hluttaws are in accordance with international standards and norms.

36. The Executive Head of the Union is the President. The Union Government will consist of the President, two Vice-Presidents, the Ministers of the Union and the Attorney General of the Union.

37. In the Judiciary, there will be three levels of court in the Union. First, there will be the Supreme Court with its High Court of Regions and State, the Court of Self-Administered Divisions, the Court of Self-Administered Zones, District Courts,

[1] National assembly.
[2] Equivalent to lower house in similar systems.
[3] Equivalent to upper house in similar systems.

Township Courts and the other Courts constituted by law. These courts will adjudicate justice in accordance with their own law, without affecting the powers of the courts at the second and third levels. Secondly, the Courts-Martial will be constituted in accordance with the Constitution and the other laws and adjudicate Defence Personnel. Thirdly, the Constitutional Tribunal will have its own jurisdiction and have the duty to interpret the provisions of the Constitution and oversee whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw and Self-Administered Division Treaty Bodies and Self-Administered Zone Treaty Bodies are in conformity with the Constitution. It is not an executive body that interprets the Constitution nor vets the laws promulgated. As in many legal systems, it is the Supreme Court that interprets law when application is made in a case. The Supreme Court interprets the law through case law.

38. A step-by-step mechanism is also provided for important ingredients of the Constitution, for example, the state of emergency. It empowers the President to promulgate an ordinance and allows the administration of a particular place or the country to be given to a body. The same would apply should there be danger of the Union disintegrating, national solidarity being threatened or should there be a cause for loss of sovereignty. In those cases, the President, after coordinating with the National Defence and Security Council, shall promulgate an ordinance and declare a state of emergency which shall be subsequently approved by the next Pyidaungsu Hluttaw. The duration of the ordinance would be for a year, after which a report would be made by the body to whom the power to administer is entrusted, for example, the Commander in Chief of the Armed Forces.

39. Strict codes of conduct are also present under the Constitution. Whenever military personnel offend or infringe the law they shall be subject to both military and civilian law.

B. Electoral Process

40. The Government of Myanmar, on 8 March 2010, enacted five electoral laws and by-laws. These laws establish the detailed framework for the multi-party general elections in Myanmar. The electoral laws promulgated are: the Union Election Commission Law (SPDC Law No. 1/2010), the Political Parties Registration Law (SPDC Law No. 2/2010), the Pyithu Hluttaw Election Law (SPDC Law No. 3/2010), the Amyotha Hluttaw Election Law (SPDC Law No. 4/2010), and the Region Hluttaw or State Hluttaw Election Law (SPDC Law No. 5/2010). The 17 members of the Union Election Commission have been preparing for the successful holding of forthcoming General Elections.

41. In accordance with the provisions of the Political Party Registration Law, a total of 42 political parties were registered with the Election Commission, out of which 5 parties failing to contest the minimum of three constituencies were deregistered. Thus, a total of 37 political parties, including those representing various ethnic nationalities groups, will be taking part in the forthcoming elections. Over 3,000 candidates will be contesting seats at three different legislative levels — the Pyithu Hluttaw, Amyotha Hluttaw and the Region or State Hluttaw.

42. Elections are an unavoidable process in the transformation of the country into a democratic State. Therefore, the formation of political parties, canvassing rights and the right to stand for election, as prescribed by the electoral laws, should be

welcomed and seen as a significant development for the successful holding of elections.

XIV. Conclusion

43. The Government of Myanmar has had to traverse a long journey and overcome formidable challenges. It is pursuing a policy of national reconciliation. It has been making relentless efforts to achieve social and economic progress. Progress would have been greater had it not been subjected to undue pressures, ranging from unilateral sanctions and the country-specific resolutions on Myanmar. Notwithstanding this, Myanmar today remains on track. The Government of Myanmar has made pledges from the outset to bring about a transition towards a multi-party democratic State. Myanmar today is at a critical stage in its history. A new Constitution has been approved by 92.48 per cent of eligible voters. A democratic State aspired to by its people will emerge after the general elections scheduled on 7 November 2010. Political parties are being formed and actively preparing to participate in the forthcoming elections. In accordance with the Constitution, the first substantive session of Pyithu Hluttaw will take place within 90 days of the elections, where the formal transfer of State power is to take place. The holding of general elections, the fifth step of our charted political road map, is itself a major significant sign of progress and achievement in Myanmar's democratization process.

44. In Myanmar, many positive developments are taking place in establishing a multi-party democratic State, aspired to by the people. Any attempt by an outsider to exert pressure or to channel future events in Myanmar according to one's own perceptions would only be self-defeating. At this crucial juncture, Myanmar needs the understanding, support and cooperation of the international community rather than pressure and resolutions that are prescriptive. The people of Myanmar know best what is in the best interest of their country and how to shape their own future.